

## 39.204

including a description of market research performed and which standards cannot be met, and provide documentation to the contracting officer for inclusion in the contract file.

### 39.204 Exceptions.

The requirements in 39.203 do not apply to EIT that—

(a) Is purchased in accordance with Subpart 13.2 (micro-purchases) prior to April 1, 2005. However, for micro-purchases, contracting officers and other individuals designated in accordance with 1.603-3 are strongly encouraged to comply with the applicable accessibility standards to the maximum extent practicable;

(b) Is for a national security system;

(c) Is acquired by a contractor incidental to a contract;

(d) Is located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment; or

(e) Would impose an undue burden on the agency.

(1) *Basis.* In determining whether compliance with all or part of the applicable accessibility standards in 36 CFR part 1194 would be an undue burden, an agency must consider—

(i) The difficulty or expense of compliance; and

(ii) Agency resources available to its program or component for which the supply or service is being acquired.

(2) *Documentation.* (i) The requiring official must document in writing the basis for an undue burden decision and provide the documentation to the contracting officer for inclusion in the contract file.

(ii) When acquiring commercial items, an undue burden determination is not required to address individual standards that cannot be met with supplies or service available in the commercial marketplace in time to meet the agency delivery requirements (see 39.203(c)(2) regarding documentation of nonavailability).

[66 FR 20897, Apr. 25, 2001, as amended at 67 FR 80322, Dec. 31, 2002; 69 FR 59703, Oct. 5, 2004]

## PART 40 [RESERVED]

## 48 CFR Ch. 1 (10–1–10 Edition)

## PART 41—ACQUISITION OF UTILITY SERVICES

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AUTHORITY: Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 59 FR 67018, Dec. 28, 1994, unless otherwise noted.

### Subpart 41.1—General

#### 41.100 Scope of part.

This part prescribes policies, procedures, and contract format for the acquisition of utility services. (See 41.102(b) for services that are excluded from this part.)

#### 41.101 Definitions.

As used in this part,